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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

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In re:	)	
	)	
Brainard Company, Inc. /	)	Case No. 05-11245
Shadowlane, Inc., Joint Venture,	)	
	)	
Debtor.	)	

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TRANSCRIPT OF DIGITAL PROCEEDINGS  
BEFORE THE HONORABLE SAMUEL J. STEINER  
MARCH 25, 2005

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RULING ONLY

Transcribed from digital recording by: Shari L. Ahearn, CCR

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APPEARANCES

For the Debtor: MR. DARREL B. CARTER  
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For Robert Comiskey: MR. MARTIN E. SNODGRASS  
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(425) 454-4122

1 SEATTLE, WASHINGTON; MARCH 25, 2005

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3 RULING ONLY

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5 TRANSCRIPT OF DIGITAL RECORDING

6 --oo0oo--

7 THE COURT: All right. As I told you before,  
8 we've spent a great deal of time on this. And for  
9 the reasons I'm about to go into, I'm going to grant  
10 the motion for relief from the stay.

11 First, insofar as the paperwork is concerned,  
12 the debtor's response is unsupported by any properly  
13 submitted evidence. There are no declarations  
14 regarding the facts, and the exhibits are simply  
15 attached to the response.

16 Second, I agree with the moving party that this  
17 is, in effect, a bad-faith filing.

18 It is certainly true that the debtor was not  
19 created for the purpose of the transfer of the  
20 property to it but has in fact existed for several  
21 years. However, it is extremely troublesome, from  
22 these facts that show the property was initially  
23 transferred by this debtor to the LLC and then back  
24 from the LLC to the debtor on the eve of a  
25 bankruptcy filing. It gives the appearance of some

1           sort of a shell game, particularly in view of the  
2           fact that this is the second Chapter 11 filing  
3           involving this particular parcel of property.

4           Beyond that, other indicia of bad faith or of  
5           the new entity syndrome are present; or perhaps I  
6           should say the old entity syndrome.

7           Here we have a transfer of the property on the  
8           eve of foreclosure for no consideration. This is a  
9           single-asset case. The debtor has no business and  
10          has apparently few or no employees. Insofar as I  
11          know, there is no priority or unsecured debt. And  
12          there's no ability to service the secured debt on  
13          the property other than from the property.

14          Incidentally, Counsel, I don't know how deeply  
15          you went into your briefing. But in 1990, I wrote  
16          an opinion on this in the matter of Meyers Way  
17          Development, Limited Partnership, which is 116 BR  
18          239.

19          Of course, you know, at the center of the  
20          dispute is this subordination agreement. I conclude  
21          that the debtor's belief, which is to the effect  
22          that its position regarding the agreement is legally  
23          correct, does not rise to the level of a good-faith  
24          reason for the transfer of this property.

25          Finally, I have some problems with the debtor's

1           analysis of encumbrances. As we indicated before,  
2           the first is getting -- the balance on that is  
3           getting close to a million dollars. The debtor  
4           hasn't factored in the \$11,000 due in real estate  
5           taxes, and we don't have a current appraisal on the  
6           property.

7           As I said, for the reasons I have indicated,  
8           the motion will be granted prospectively.

9           Now, if the debtor here feels that Andrews and  
10          Comiskey have somehow violated this subordination  
11          agreement, the debtor ought to sue them.

12          So, Mr. Snodgrass, I'll leave it up to you to  
13          present an order, and I will -- I want a transcript  
14          of this oral ruling made for the record.

15          All right. All concerned, thank you very much.

16          MR. SNODGRASS: Thank you, Your Honor. I think  
17          I can scratch up my order and get it to you right  
18          now.

19          THE COURT: All right.

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21                        (THE PROCEEDINGS IN THIS MATTER WERE  
22                        CONCLUDED.)

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C E R T I F I C A T E

I, Shari L. Ahearn, hereby certify that:

the foregoing pages represent an accurate and  
complete transcription, to the best of my ability,  
from the digitally recorded proceedings before  
The Honorable U.S. Bankruptcy Judge presiding in  
the aforementioned matter; and

that these pages constitute the original or a  
true copy of the transcript of the digitally  
recorded proceedings.

Signed and dated this 15th day of April, 2005.

by: /s/ Shari L. Ahearn  
Certified Court Reporter  
CCR# 2396

